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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/541,647    04/03/00    APPLE

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EXAMINER
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MARK C JACOBS ESQ  
3033 EL CAMINO AVENUE  
SCRAMENTO CA 95821

YIP, W	
ART UNIT	PAPER NUMBER

3635

DATE MAILED:

*2*

06/08/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/541,647

Applicant(s)

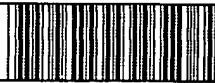
Phillip Apple

Examiner

Winnie Yip

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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#### DETAILED ACTION

This is a first office action for application Serial No. 09/541,647 filed April 3, 2000.

#### *Drawings*

1. Figure 7 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).
2. The drawings are objected to as failing to comply with 37 CAR 1.84(p)(5) because they do not include a reference sign to define the element mentioned in the description and as claimed: "a top finial" (page 6, line 2; claims 6-7). Correction is required in both drawings and the specification accordingly.

#### *Specification*

3. The disclosure is objected to because of the following informalities: It is not clear what is means by "Here 8 are shown" and "or smaller that 8". It is confusing what is the numeral number "8" referring.

Appropriate correction is required.

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*Claim Rejections - 35 U.S.C. § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant 35 U.S.C. 112, second paragraph, as being indefinite regards as the invention.

In claims 1 and 8, it is not clear what is meant by "a South Seas or Caribbean umbrella". It makes the claims to be vague and indefinite.

The dependent claims 2-7 are also rejected on the merits.

*Claim Rejections - 35 U.S.C. § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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7. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross (US patent No. 3,626,958) in view of Caccamo (US Patent No. 3,886,678) and Huber (US Patent No. 6,226,949).

Ross shows and discloses an umbrella type of tent comprising an umbrella frame (12) having a circular roof structure formed by a series of ribs (42) and rim members (80), a series struts (64) connecting the ribs and a hub which slidably mounted on a central pole (20) to provide a means for opening and closing the umbrella frame, and a canopy having a configuration as an annulus and mounted on the top of the circular roof structure by any suitably fastening means, and a top finial (24) inherently attached on the top of the pole. Ross does not define the umbrella having a continuous woven one piece circular thatch disposed upon the canopy's exterior surface as claimed. Caccamo teaches an umbrella type structure comprising a metal frame (12) formed by a series of ribs mounted on a hub (13) disposed upon a pole, and a continuous woven one piece circular thatch (11) disposed upon the metal frame to define a circular thatched cover. Further, Huber teaches a method of attaching thatches over a roof structure. Wherein, the roof structure (11) includes a plurality of ribs (12) covered by a waterproof canopy (15), and thatches (20) are

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overlay and attached to the exterior surface of the roof structure through the canopy (15) by various types of fasteners (24) such as nails or screws. It would have been obvious to one of ordinary skill in the art to modify the umbrella of Ross having a continuous woven one piece circular thatch attached to top of the umbrella frame as taught by Caccamo and the piece of circular thatch being placed overlay to the exterior surface of the canopy and attached by fasteners through the canopy to the ribs of the roof structure of the umbrella frame as taught by Huber for providing an umbrella having heat and rain protection with desirable aesthetical appearance.

In regard to claim 3, whether or not to form the thatches in a piece having a configuration as a annulus or a disk would have been an obvious matter of design choice to one skill in the art as depends upon the shade of the umbrella to be covered as desired.

In regard to claim 4, although Ross does not show the canopy (14) being selected from what particular fabric material, however, it would have been obvious to one skilled in the art to make the canopy of the umbrella of Ross in view of Caccamo and Huber being selected from a particular fabric material as claimed because the fabric materials, such as acrylic, polyester, nylon,

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cotton can canvas as claimed are well known fabric material used in the art which take advantage of desirable properties such as waterproof, durable, etc.

In regard to claim 8, although Ross does not define the ribs and struts of the umbrella frame are made of metal, an umbrella frame of Ross combined with Caccamo and Huber would have been made of metal or as well as wood may also be used to particular advantage since such materials are well known frame materials in building structure, are lightweight, durable and weather resistant with minimum maintenance requirements, all of the foregoing are within the skills, competence and knowledge of the person with ordinary skills in the cognizant art.

#### *Citations*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure, however, does not read on applicant's claims.

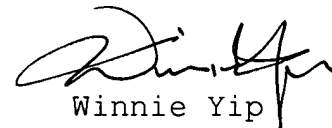
Hogan et al. '518 teaches an umbrella type structure having a frame supporting a canopy connected with thatches. Butler '344 teaches a continuous woven one piece thatch placed overlay a canopy and attached to the frame of the roof structure. Griffin '571, Tung '960, Hermanson '653, and Lee '722 teach various

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outdoor umbrellas having a frame structure similar to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Yip whose telephone number is (703) 308-2491. The examiner can normally be reached on Mondays through Friday from 9:30 AM to 6:30 PM.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113. The Fax phone number for this Group is (703) 305-7687.

  
Winnie Yip  
Patent Examiner  
Group Art Unit 3635

June 1, 2001